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COMMISSION ON HUMAN RIGHTS
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Item 3 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Note by the Secretariat

1. On 19 March 1997, a letter was addressed by Mr. Michael Banton, Chairman of the Committee on the Elimination of Racial Discrimination, to the Chairman of the forty-eighth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities containing proposals for the preparation of studies and requesting him to present these proposals to the Sub-Commission during its forty-ninth session.

2. In accordance with this request, the letter from the Chairman of the Committee on the Elimination of Racial Discrimination and the attachment are reproduced in the annex to the present note.

GE.97-12678 (E)

Annex

Letter dated 19 March 1997 from the Chairman of the Committee on the Elimination of Racial Discrimination addressed to the Chairman of the forty-eighth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

I wish to refer to the report of the 7th meeting of persons chairing the human rights treaty bodies (A/51/482) and in particular to paragraph 53 which recommended that "the treaty bodies take a more active role in supporting, suggesting topics for and cooperating in the preparation of studies by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as by Special Rapporteurs and other experts appointed by the Commission on Human Rights.

The Committee on the Elimination of Racial Discrimination discussed this issue during its fiftieth session (CERD/C/SR.1189) and decided to propose to the Sub-Commission the following topics:

Succession to human rights obligations;
Reservations to treaties;
The advisability of referring to definitions of the terms "race" and "racism" in texts prohibiting racism and its implications;
Claims by States parties that racial discrimination is absent in their territory;
An elaboration of the implications of article 4 of the Convention;
The application of article 7 regarding freedom of the press;
"Affirmative action";
Rights of non-citizens;
The return of refugees' property.

I hope you will have the opportunity to present these proposals to the Sub-Commission during its forty-ninth session to be held in August 1997.

Please find attached a short explanation of the rationale for each suggested topic.

(Signed) Michael BANTON

Succession to human rights treaty obligations

The break-up of several States in the recent past has confronted the international community with the phenomenon that parts of the population formerly protected by human rights agreements now lack such protection since the newly developed States have failed to accede to the respective human rights agreements.

Reservations to treaties

Reservations formulated by different States to international human rights treaties are a source of problems for the interpretation and application of certain fundamental human rights. This is the case also for the International Convention on the Elimination of All Forms of Racial Discrimination. It would be useful to study the different reservations made by various States parties, their formulation and the acceptance of and objections to such reservations by other States parties, especially with respect to their effects on individuals and other States. While reservations are regulated generally by the Convention of Vienna, this Convention does not concern itself specifically with problems associated with an international instrument having the specific objective of promoting human rights, to which cannot be applied the concept of reciprocity given that these treaties were conceived to apply without discrimination to all persons (A/CN.4/470/, p. 138, 30 April 1995).

The advisability of referring to definitions of the terms "race" and "racism" in texts prohibiting racism and its implications

It has been advanced that the concept of race is scientifically false and cannot be legally defined in contrast to the terms "colour", "descent", "national or ethnic origin" which are frequently used in international instruments. It has been argued that the use of the concept of "race" must be avoided because it is advocated by those who advance the idea or theory of the superiority of one race over others. Based on these propositions, it has been suggested to eliminate the term "race" from both national and international legal texts. It would be interesting to have a study undertaken on this subject to analyse these propositions and to see what, if any, response can be given to these arguments.

Claims by States parties that racial discrimination is absent in their territory

The States parties should understand that it is impossible for the Committee to accept the complete absence of racial discrimination in any society. Apart from that, laws have also a preventive content.

An elaboration of the implications of article 4 of the Convention

This point is related to claims by States parties that racial discrimination does not exist in their territories, but is also related to the allocation of effective legal resources and measures to punish or/and prevent racial discrimination.

The application of article 7 regarding freedom of the press

It would be useful to have an analysis of the contradictions between the right to freedom of the press and the rights of minorities, or any ethnic groups, to be protected from "media messages" which could have racist implications.

"Affirmative action"

Articles 1.4 and 2.2 encourage States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to take special measures for the purpose of securing adequate advancement of certain racial or ethnic groups or individuals. Study and analysis are needed as to the circumstances which would warrant such affirmative action and the experiences that have been gained in this area.

Rights of non-citizens

In an increasing manner distinctions are being made between different categories of non-citizens (for instance in the law of the European Union). These distinctions may amount to total exclusion of persons, depriving them of the most fundamental rights and having racist implications. This raises questions from the perspective of the International Convention on the Elimination of All Forms of Racial Discrimination, in spite of article 1.2 of the Convention.

The return of refugees' or displaced persons' property

The flight of hundreds of thousands of refugees or displaced persons who leave their homes and properties empty, as a result of an armed conflict, frequently results in such property being occupied by non-authorized people. Such is at present the case in the Great Lakes region, Bosnia and Herzegovina, Cyprus and elsewhere. After their return to their homes of origin all such refugees and displaced persons have the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated for any such property that cannot be restored. Furthermore, any commitments or statements relating to such property made under duress should be null and void.

The magnitude of this problem is such that it requires a study on the basis of international law and existing international instruments in the field of human rights.